SUBJECT INDEX

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Statutes

IN THE

Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL, *Appellants,*

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district, *Appellee.*

On Appeal From the United States District Court for the Eastern District of California.

Brief of Amicus Curiae, Irrigation Districts Association of California.

I.
STATEMENT OF THE CASE.

In this action, appellants seek to overthrow the landowner voting qualifications of the District through application of the "one man, one vote" doctrine. In essence, appellants' action seeks to take the management of District affairs away from the 307 landowners who own its 193,000 acres, are subject to the jurisdiction and governing power of the District, and give this control to the registered voters among the 77 men, women and children who live in the District who are not subjects of its powers. Of these 77, only members of one family own land within the District. (A. 85.)

II.

THE INTEREST OF THE IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA.

The Irrigation Districts Association of California is an association of over 250 public districts who distribute for irrigation, municipal and domestic use over 75% of the water in the State of California. Many of the public districts who distribute water for agricultural purposes operate under California statutes, which, like the appellee, use landownership as a voting qualification. Consequently, any attack on a long standing workable method of providing voting control to the persons who are directly affected by the operation of a district is of great concern to the Association and its members.

Within California there are numerous types of districts which are formed to provide various types of services. Some districts, such as community services districts[1] are formed to provide essentially the same services, and to perform the same functions as a city. They have broad general powers which affect all of the persons living within their boundaries, including the power to levy taxes on property located therein.

In contrast with this type of district, the members of the Irrigation Districts Association of California are essentially districts of very limited powers. Their primary function is to deliver water. They do not have the power to tax, but only to assess property for the benefits that property has received through district op-

[1]California Government Code, § 61000.

erations. These water districts throughout the State vary considerably as to their size and population. Many of them of large size have few, if any, inhabitants actually living within their boundaries. The Dudley Ridge Water District, for example, formed under Division 13 of the Water Code of the State of California, and located in Kings County, contains 29,937 acres. Its only source of water for irrigation purposes is from the State Project. The District acquires the water from the State, and distributes it to the lands within its boundaries. Without such supply, the land would be almost totally unproductive. Voting is by landowners.

The Dudley Ridge Water District contains 373 parcels of land owned by 213 different owners. In the entire District, there are only six residents, all members of one family—five of whom are old enough to register to vote, and two of them, a husband and wife, own land within the District. Of the five members on the Board of Directors, all are landowners, but only one resides within its boundaries.

In contrast to landowner voting districts, there are water districts within the State whose primary function is to distribute water within metropolitan areas for domestic and municipal purposes. These districts are formed under different acts more suited to the needs of the people they serve, and use a general electorate method of voting, rather than landowner qualifications. Within the State, as the law is presently constituted, there are acts such as the California Water District

Act[1] and the Water Storage District Act,[2] which provide for landowner qualifications, and are well suited to districts engaged in delivering water for agricultural purposes. In contrast, there are acts such as the County Water District Act,[3] which have popular voting, and are well suited to districts engaged in municipal or domestic water deliveries, often with attendant sewer service.

It is the policy of the Association to maintain for its member districts sufficient flexibility in the laws of the State of California so that in situations where the primary function of a district is to benefit the land within its boundaries by furnishing a supply of irrigation water to that land, that the control of the district's functions remains with the people who are directly and primarily affected by the district activities—that is, the persons who own the land for whose benefit the district operates. If such flexibility is not maintained under the California statutes, then in areas such as the Dudley Ridge Water District, and the appellee water district, it would be difficult, if not impossible, for the districts to properly function if the voting rights were taken away from the people directly affected by the districts' operations, and placed in the hands of persons who have little or no interest therein merely because they are residents within the district boundaries.

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[1]California Water Code, Div. 13.
[2]California Water Code, Div. 14.
[3]California Water Code, Div. 12.

III.

SUMMARY OF ARGUMENT.

Until the cases decided by this Court in the June 1971 Term, the application of the Equal Protection Clause through the "one man, one vote" doctrine was being expanded in every decision. The later cases have eased the strict pronouncements of the earlier ones, and as the decisions now stand, greater flexibility is allowed in local government to meet local needs.

When the facts of this case are exposed to the current test that "particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality,"[1] and that there must be a "valid relation to the interest of (the) group in the subject matter of the election,"[2] property qualifications and weighted voting should both be upheld by this Court.

Even under the stricter tests of the earlier cases, these voting processes should stand. The appellee District is not a governmental agency of general powers and purposes. Its function, like its powers, are limited to providing a benefit for land by furnishing water for irrigation of agricultural crops. The owners of the land who receive the benefits pay the district for providing the water, and the necessary works for delivery in proportion to the amount of benefit they receive.

The landowners are the only people directly governed by the District and subject to its jurisdiction. The impact of the District on persons other than landowners is indirect only, and flows through the land-

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[1] *Abate v. Mundt*, 403 U.S. 182 at 185.
[2] *Gordon v. Lance*, 403 U.S. 1 at 4.

owners before any effect is felt. The 77 residents of the District are only affected by District operations as employees of landowners, and such effects as they feel are the same as non-resident employees. The residents are not governed by, nor in the jurisdiction of the District. They do not constitute a class who need or should have the right to control District operations.

The District has a more direct impact on lessees of landowners than on residents, but here again, the impact is derivative from the landowner, is temporary in nature, and is based on a contract in which certain rights of landowners may be exercised by the tenant. If in negotiating that contract, the lessee desires the right to vote, and the landlord is willing to grant it, proxy voting is allowed. If the lessee fails to pay a water charge it becomes a lien on the land of the lessor, and must be paid by him.

The voting among landowners is weighted in accordance with the burden they bear in paying assessments. Those who must pay more for the District's benefits have a larger voice than those who pay less. This type of weighting is common in Water Companies, and other corporations and constitutes a reasonable and fair standard of allocating the votes among the landowners.

This Court should not use "one man, one vote" to take the right to control the operation of the District away from the 307 landowners who are directly and primarily interested therein, and turn that control over to those over 18 among the 77 men, women and children who live within the District, but are unaffected by it, or subject to its jurisdiction.

IV.

ARGUMENT.

A. Introduction.

Appellants seek in this proceeding through the application of the "one man, one vote" rule to deprive the landowners within the District, their right of franchise, and to transfer that right to the persons who live within the District boundaries. Their attack on the voting system is twofold. First, they contend that the Equal Protection Clause strikes down landownership as a qualification for voting. As a corollary, they claim that it invalidates weighting the voting on an assessed value basis so that an owner whose land is assessed more than his neighbor has a larger voice in voting on District affairs.

We, as *amicus curiae*, contend that there is a "compelling State interest" to allow landowner qualifications for special districts with limited powers, whose primary function is to provide a benefit for the land served, and that weighting the votes cast in accordance with the share paid for those benefits received is a reasonable classification of the voting power.

B. The Tulare Lake Basin Water Storage District Is a District of Limited Power Whose Function Is to Provide a Benefit for the Lands Within Its Boundaries.

Appellee District was formed under the Water Storage District Act of California.[1] Under the provisions of this Act such a district can only be formed upon a petition of the landowners.[2] The petition is filed with the Department of Water Resources of the State.

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[1]Div. 14 of the California Water Code.

[2]California Water Code, § 39400.

After investigation and hearing by the Department an election is called to determine whether the district should be formed.[1] As presently constituted, the law allows the determination as to whether or not the district should be formed to be established by the landowners who cast one vote for each $100.00 of the assessed value of his land, exclusive of improvements located thereon.[2] Once formed, the district has the power to "acquire, improve and operate the necessary works for the storage and distribution of water, and any drainage or reclamation works connected therewith."[3] In addition thereto, the district may provide for the generation and distribution of hydroelectric energy incidental to water storage and distribution.[4] Essentially, except to carry out these powers and purposes, the district has no other general powers.

Insofar as its revenues are concerned, the district may fix tolls or charges for the use of water and "collect the same from all persons receiving the benefit of the water or other services. The tolls and charges shall be proportional, as nearly as practicable, to the services rendered."[5]

The district further has the power to levy assessments which are apportioned "in accordance with the benefits that will accrue to each tract of land held in separate ownership by reason of the expenditures of the money and the completion of the project . . ."[6] It should be noted that the district does not have the general power

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[1]California Water Code, § 39900.
[2]California Water Code, § 41001.
[3]California Water Code, § 43000.
[4]California Water Code, § 43025 (A power not exercised by appellee.)
[5]California Water Code, § 43006.
[6]California Water Code, § 46176.

of taxation, but only the power to assess for benefits conferred. Land that is not benefited by the district's operations upon petition may be excluded therefrom.[1]

C. The Decisions of This Court on the "One Man, One Vote" Doctrine.

1. The Older Decisions.

The late Mr. Justice Harlan in his separate opinion in the recent case of *Whitcomb v. Chavis*[2] characterized the early line of cases which established the "one man, one vote" doctrine as reflecting the "deep *personal* commitments by some members of the Court to the principles of pure majoritarian democracy." Whether the early decisions are based upon this principle or not, it is clear that they established a doctrine that applied the "one man, one vote" principle to fields that had theretofore never felt its impact.

In *Baker v. Carr*[3] the doctrine was first applied to state legislatures, and reapportionment was required in order to equalize voting rights on the "one man, one vote" theory.

In *Reynolds v. Sims*,[4] and *Lucas v. Forty-Fourth General Assembly of Colorado*,[5] the doctrine was extended so as to strike down the long standing principle of apportionment of state senates by area rather than population.

In *Avery v. Midland County, Texas*[6] the doctrine was applied to county governing bodies.

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[1]California Water Code, § 48029.
[2]403 U.S. 124.
[3]82 S.Ct. 691.
[4]377 U.S. 533.
[5]377 U.S. 713.
[6]390 U.S. 474.

In *Kramer v. Union Free School District #15*[1] it was applied to a school district.

In *Cipriano v. City of Houma*[2] "one man, one vote" was applied to a city bond election.

Hadley v. Junior College District[3] extended the doctrine to a junior college district.

City of Phoenix v. Kolodziejski[4] applied the doctrine to revenue bonds of a city based on property qualification.

As may be seen from the foregoing general outline, the Court applied the principle of "one man, one vote" not only to state legislative bodies, but also applied the doctrine to municipalities and local districts. In such instance, however, where the doctrine was applied to local districts, the Court pointed out that the district involved had a general impact on all of the persons residing within its boundaries, and that there was no rational reason in the cases presented to deprive those upon whom the district acted of their right to voice their measure of control over those activities by casting a vote. Even though the Court was embarked in the early cases in expanding the doctrine, saving language was placed in all the decisions so that too wide construction of the doctrine would not hamper local, factual situations.

In *Avery*, the Court struck down an argument that the doctrine should not apply to local governments,

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[1]395 U.S. 621.
[2]395 U.S. 701.
[3]397 U.S. 50.
[4]399 U.S. 204.

noting that a county had broad governmental functions, including the right to tax, and thus:

> ". . . does have power to make a large number of decisions having a broad range of impacts on all the citizens of the county."[1]

The Court limited its decision, however, by stating:

> "Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that *units with general governmental powers* over an entire geographic area not be apportioned among single-member districts of substantially unequal population." (emphasis added.)[2]

and

> ". . . the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government."[3]

Kramer applied the doctrine to a school district election where state law restricted voting to persons who were owners or lessors of real property within the district, or parents of children enrolled in local, public schools. In the decision, the Court spent a great deal of time in describing the acts performed by the district on matters having a general impact upon the electorate at large. The Court agreed with the argument of the appellant, stating:

> "All members of the community have an interest in the quality and structure of public education, appellant says, and he urges that 'the decisions taken by local boards . . . may have grave consequences to the entire population.' "[4]

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[1]390 U.S. 483.
[2]390 U.S. 485.
[3]390 U.S. 485.
[4]395 U.S. 630.

Again, however, the Court placed saving language in the decision, stating:

> "We need express no opinion as to whether the State in some circumstances might limit the exercise of the franchise to those 'primarily interested' or 'primarily affected.' Of course, we therefore do not reach the issue of whether these particular elections are of the type in which the franchise may be so limited."[1]

Thus, *Kramer*, again left open the question as to whether the doctrine should be applied to all levels of local government.

Cipriano was decided the same day as *Kramer*, and a property qualification for a city bond issue for municipal improvements was struck down. The Court noted that all of the users of utilities pay the utility bills which would be used to pay the revenue bonds which were being issued, and thus, determined that the property owners felt no greater impact than the population as a whole. The Court stated:

> "The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like nonproperty owners, use the utilities and pay the rates, however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike."[2]

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[1] 395 U.S. 632.
[2] 395 U.S. 705.

In view of the foregoing, the Court unanimously determined that there was no "rational basis" for limiting the franchise to the landowners. Again, however, the Court placed saving language in the decision by its footnote, stating:

> "As in Kramer v. Union Free School District No. 15, supra, we find it unnecessary to decide whether a State might, in some circumstances, limit the franchise to those 'primarily interested.' "[1]

In *Hadley* in applying the doctrine, the Court, as it did in *Avery*, discussed the function of the district in some detail, and stated:

> "We feel that these powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in Avery should also be applied here."[2]

Thus, the Court again reiterated as it did in *Avery* that in order to apply the "one man, one vote" principle, that the board involved in the election must have powers general enough to have sufficient impact on the entire electorate to justify the application of the rule. The Court established as the general rule that whenever there is a state or local election to select persons to perform governmental functions, that "one man, one

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[1]Footnote No. 5 at 395 U.S. 704.
[2]397 U.S. 52.

vote" shall apply. It modified its general rule, however, by stating:

> "It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately effect different groups that a popular election in compliance with Reynolds, supra, might not be required . . ."[1]

and again:

> "And a State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, '(v)iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation.' "[2]

It is interesting to note that in *Hadley*, the majority did not cite either *Kramer* or *Cipriano*.

The *Phoenix* case extended the doctrine set out in *Cipriano* where revenue bonds were involved, to general obligation bonds of a city. The Court concluded:

> "The differences between the interests of property owners and the interests of nonproperty owners are not sufficiently substantial to justify excluding the latter from the franchise . . . Placing such power in property owners alone can be justified only by some overriding interest of those owners which the State is entitled to recognize."[3]

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[1] 397 U.S. 54.
[2] 397 U.S. 55.
[3] 399 U.S. 205.

The *Phoenix* case was decided on a five to three vote with the three dissenters noting that the property owner classification was a rational public policy in view of the fact that the bonds were a lien upon real property and were paid by assessments against the real property.

2. The Tests Applied in the Older Decisions.

In order to ascertain whether or not the action of the state was violative of the Equal Protection Clause, the Court established certain tests that it applied to the factual situation at hand. During the years that the early cases evolved, the standard against which the state action was measured seemed to grow more stringent. In *Wesberry v. Saunders*[1] the Court recognized that "it may not be possible to draw congressional districts with mathematical precision," and it held that the Constitution requires that they be drawn so that, "as nearly as is practicable, each representative should cast a vote on behalf of the same number of people."

In *Williams v. Rhodes* the Court stated:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."[2]

In *Kramer* the Court stated:

> "... any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."[3]

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[1]376 U.S. 1 (1964).
[2]393 U.S. 23 at page 30.
[3]395 U.S. at 626.

and

> "Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."[1]

In *Kirkpatrick v. Preisler*[2] perhaps the most stringent rule in legislative apportionment cases was set forth when the Court stated:

> ". . . the command of Art I, § 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown."[3]

In speaking about the *Kirkpatrick* majority opinion, Justices Harlan and Stewart, dissenting, stated:

> "Whatever room remained under this Court's prior decisions for the free play of the political process in matters of reapportionment is now all but eliminated by today's Draconian judgments. Marching to the non-existent 'command of Art I, § 2' of the Constitution, the Court now transforms a political slogan into a constitutional absolute. Strait indeed is the path of the righteous legislator. Slide rule in hand, he must avoid all thought of county lines, local traditions, politics, history, and economics, so as to achieve the magic formula: one man, one vote."[4]

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[1] 395 U.S. at 627.
[2] 394 U.S. 526 (1969).
[3] 394 U.S. at 531.
[4] 394 U.S. 549.

At other parts of the decisions, even in the most recent cases, however, the power of the state to make reasonable adjustments was recognized in *Kramer*. The Court quoted with approval *Swann v. Adams*[1] where the Court stated:

> "variations (are allowable) which are based on legitimate considerations incident to the effectuation of a rational state policy."[2]

3. The Recent Decisions of This Court.

On June 7, 1971, a group of decisions was announced by this Court which constituted a completely new turn in the direction that the "one man, one vote" doctrine was taking. Up until this time, the trend had clearly been in making the doctrine more and more rigid, and uncompromising. The new decisions made an abrupt about-face, and the pendulum started in the other direction. As the late Mr. Justice Harlan stated in his separate opinion in *Whitcomb v. Chavis:*

> "Earlier this Term I remarked on 'the evident malaise among the members of the Court' with prior decisions in the field of voter qualifications and reapportionment. Oregon v. Mitchell, 400 U.S. 112, 218 (1970) (separate opinion of this writer).
>
> Today's opinions in this and two other voting cases now decided confirm that diagnosis."[3]

The first case in which decision was announced was *Abate v. Mundt*.[4] This case involved a challenge of

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[1]385 U.S. 440.
[2]385 U.S. at 444.
[3]403 U.S. at 165.
[4]403 U.S. 182.

malapportionment in Rockland County, New York. The Court of Appeals in the State of New York upheld the new plan, and the United States Supreme Court affirmed in *Abate*. The Court re-established the early viable tests, stating:

> "In assessing the constitutionality of various apportionment plans, we have observed that viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing societal needs, Sailors v. Kent Board of Education, 387 U.S. 105, 110-111 (1967) . . ."
> ". . . this Court has never suggested that certain geographic areas or political interests are entitled to disproportionate representation. Rather our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality."[1]

Previously, the Court had held a 12.1% variance on a similar plan in *Wells v. Rockefeller*[2] as being an invalid variation from equality. They upheld an 11.9% variation in *Abate*.

In *Whitcomb v. Chavis*[3] the Court was involved with the validity of multi-member districts. A three judge District Court had determined that in the particular facts in Indiana, that a multi-member district constituted discrimination, and the Supreme Court re-

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[1]403 U.S. at 185.
[2]394 U.S. 542.
[3]403 U.S. 124.

versed, holding that the facts did not establish such discrimination. The Court stated:

> "The mere fact that one interest group or another concerned with the outcome of . . . elections has found itself outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, . . . there is no indication that this segment of the population is being denied access to the political system."[1]

A further change in the approach of the Court in *Whitcomb* is evidenced where the Court stated:

> "Even if the District Court was correct in finding unconstitutional discrimination against poor inhabitants of the ghetto, it did not explain why it was constitutionally compelled to disestablish the entire county district *and to intrude upon state policy any more than necessary to* ensure representation of ghetto interests." (emphasis added)[2]

In *Ely v. Klahr*[3] the Court affirmed the decree of the District Court in Arizona on reapportionment in which the District Court retained jurisdiction to create a Court plan for reapportionment in event the legislature failed to act in time for the 1972 elections. The Court noted in a footnote that judicial relief becomes appropriate only when the legislature fails to reapportion according to Federal constitutional requisites in a timely fashion after having an adequate opportunity to so do.

In *Gordon v. Lance*[4] the Supreme Court reversed the West Virginia Supreme Court of Appeals after the

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[1]403 U.S. at 154 and 155.
[2]403 U.S. at 160.
[3]403 U.S. 108.
[4]403 U.S. 1.

State Court had determined that a 60% vote for bonded indebtedness was unconstitutional under the "one man, one vote" theory. Before discussing *Gordon v. Lance*, it should be noted that in a summary disposition, and based upon *Gordon v. Lance*, the United States Supreme Court overruled the California Supreme Court in *Westbrook v. Mihaly*.[1] The California Supreme Court, as had the West Virginia Supreme Court, determined that only a majority vote could apply on a bond election as any other requirement diluted the strength of those persons desiring the bond election to carry. Both of the State Supreme Courts relied on *Gray v. Sanders*,[2] and *Cipriano*.[3] The Court stated:

> "We conclude that the West Virginia court's reliance on the Gray and Cipriano cases was misplaced. The defect this Court found in those cases lay in the denial or dilution of voting power *because of group characteristics-geographic location and property ownership—that bore no valid relation to the interest of those groups in the subject matter of the election;* moreover, the dilution or denial was imposed irrespective of how members of those groups actually voted." (emphasis added)
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> "Cipriano was no more than a reassertion of the principle, consistently recognized, that an individual may not be denied access to the ballot because of some extraneous condition, such as race, e.g., Gomillion v. Lightfoot, 364 U.S. 339 (1960); wealth, e.g. Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); tax status, e.g. Kramer v. Union Free School Dist., 395 U.S. 621

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[1] 2 Cal. 3d 765, 471 P. 2d 487.
[2] 372 U.S. 368.
[3] 395 U.S. 701.

(1969); or military status, e.g., Carrington v. Rash, 380 U.S. 89 (1965)."[1]

and

"We conclude that so long as such provisions do not discriminate against or authorize discrimination against any identifiable class they do not violate the Equal Protection Clause."[2]

The foregoing decisions of the Supreme Court clearly indicate that the rights of the states to promote plans for the operation of local functions is going to be scrutinized in a different light than the trend established by the early decisions. The voting methods should now be examined to determine if they meet "the needs of a local community",[3] and create "flexibility in municipal arrangements necessary to meet changing social needs."[4]

In making these determinations this Court has now instructed the courts below not "to intrude upon state policy any more than necessary."[5]

Subsequent to the foregoing decisions, this Court has dealt with voting requirements in other cases. In *Bullock v. Carter*[6] the Court examined filing fees for candidates stating:

"In approaching candidate restrictions it is essential to examine in a realistic light the extent and nature of their impact upon voters."[7]

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[1]403 U.S. at 4 and 5.
[2]403 U.S. at 7.
[3]*Abate v. Mundt*, 403 U.S. at 185.
[4]*Abate v. Mundt*, 403 U.S. at 185.
[5]*Whitcomb v. Chavis*, 403 U.S. at 160.
[6](1972) 31 L. Ed. 2d 92.
[7]31 L. Ed. 2d at 100.

The Court held in *Bullock* that the fees must be reasonable so as not to deprive those otherwise qualified from seeking election.

In *Dunn v. Blumstein*[1] the Court considered durational residence requirements of a bona fide resident of the state. In view of the fact that the exclusion from the polls was of a person otherwise qualified to vote, and subject to the jurisdiction of the state in which he resided the Court determined that by reason of "the character of the classification in question; the individual interests affected by the classification; and the governmental interest asserted in support of the classification . . . that the state must show a substantial and compelling reason for imposing durational residence requirements."[2] It should be noted that the imposition of "compelling reasons" as a test was made here in a case where the man excluded was in all other respects, qualified as a person who was entitled to vote and was being governed by the state which was denying him the franchise.

If a summary can be made of the prior "one man, one vote" cases, it may be fairly said that while the right to vote is jealously guarded, in each instance where voting procedures were struck down the Court has found that the persons who were denied the franchise were in the class of persons within the jurisdiction of and being governed by the agency over whom they had a diluted or no voting control. In such a situation, the Court required the state to show a "compelling reason" why the restrictions were present.

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[1]31 L. Ed. 2d 274.
[2]31 L. Ed. 2d at 280.

We will show, however, that in the present case the residents who happen to live within the District are not by reason of such residency subject to the jurisdiction of the District, nor are they being governed by the District. It is the landowners on the other hand who are in the District's jurisdiction and governed by it to the limited extent that the District exercises governmental functions. If the "compelling reason" test is required, it should be used to show what right the state would have to take the franchise away from the landowners. As the people being governed, they should have the voice to control those who exercise the governmental power.

D. Application of Prior Decisions to Landowner Qualification in District Elections.

As we have noted, the appellee is a governmental agency of very limited powers. It was formed for the purpose of benefiting the land within its boundaries by supplying those lands with water for irrigation of crops. It has the power to charge for water delivered, and to assess land in accordance with the benefits the land has received.

To vote you must be a landowner in the district.[1] The elected Board of Directors carries on the business of the district,[2] but the construction of facilities or projects is determined by election of the landowners.[3] The landowners, if they so desire, can designate persons to vote for them by proxy.[4]

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[1]California Water Code, § 41000.
[2]California Water Code, § 40658.
[3]California Water Code Div. 14, Part 5, § 40658.
[4]California Water Code, § 41002.

Under the foregoing facts, appellants claim that placing the right to vote in the 307 landowners and denying the right to some of the 77 men, women and children who live within the District deprives those residents of protection afforded by the Equal Protection Clause of the Constitution. Even under the criteria of the older decisions of this Court we would find here a "compelling state interest" which would authorize such a limitation of the franchise. Under the later decisions the answer is even more obvious.

The purpose and function of the District is to benefit land, not the people who happen to live within its boundaries. The District has a direct effect upon the land and hence the landowner. It has at most an indirect effect upon residents and even here the fact of residence has no relation to the impact that District operations have on a particular individual.

It could be argued that the furnishing of water for irrigation creates jobs and therefore the District's acts affect workers who live within the boundaries. If this is true, the District's acts have precisely the same effect on workers who live outside of the boundaries, but who work on land within the District. Why should one worker be given the franchise, and not the other? Their relationship to the District is the same except for the accident of residence. In each case, however, it cannot be said that their relationship to the District is such that denying either of them the right to vote is a violation of their rights protected by the Equal Protection Clause. Certainly, the indirect effect of the District's acts on these workers cannot be compared to the direct effect those acts have on the landowners. The landowners are truly the only people who are governed

by the district. The acts of the district directly affect only them, and they are directly burdened with payment for district benefits. In addition to assessments, unpaid tolls and charges become a lien on the land on which water is used and must be paid by the landowner.[1]

Appellants further argue that the Constitutional rights of lessees are destroyed by giving the vote to their landlords. They state that District activities have an effect on lessee operations, and for this reason, they are denied "equal protection" if they do not have the franchise.

We cannot agree. The relationship between the lessee and the lessor is contractual. The lessee has only such rights to the use of the land that is granted by the lessor. His right to the use of the land stems only from the rights held by the landowner, which the landowner agrees in the lease the lessee may exercise. To tell a landowner that he *must* give a lessee the same right to direct district operations by voting as the landowner has is no different than telling the landowner that he *must* give a lessee the right to use the property in any way the lessee determines, without restriction or control by the landlord.

If the landowner is willing that the long term destiny of his land as affected by District operations be turned over to the lessee, then the lease can provide that the lessee be named as the landlord's proxy. This should not be forced on the landlord, however, as the lease may be of short duration and the landowner may not desire to have long term plans relating to the irrigation of this land decided by a short term tenant.

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[1]See California Water Code, §§ 47183-47185.

From a Constitutional standpoint, it is difficult to perceive how a person whose only interest in the land stems from an agreement which authorizes him to exercise certain rights owned by the lessor is denied "equal protection" if the landowner decides to limit the lessee's rights. The creation of a contractual relationship in and of itself does not create Constitutional rights in one of the parties where such rights did not exist in absence of the contract.

The Legislature of California determined that in a district such as appellee, that the persons most directly concerned and affected by the operation of the district were the landowners who received the benefits and paid the bills. The Legislature felt that this was a reasonable class to establish in granting the right to vote in district elections. In circumstances such as are presented in this case, it is the only way to provide a "viable local government."[1] To take the right to vote away from the 307 landowners and turn it over to the 77 men, women and children, most of whom are the employees of the landowners, would not meet the "particular circumstances and needs of a local community."[2] It would take voting control away from those directly interested and place it with those who at most have a very indirect interest in district operations.

E. Weighted Voting Based on Assessed Value Does Not Violate Due Process.

If the state may select landowners as the class of persons directly interested in district activities so as to limit the franchise to that group, does the state have the further right to apportion voting among this class

[1] *Abate v. Mundt*, 403 U.S. at 185.
[2] *Abate v. Mundt*, 403 U.S. at 185.

based on assessed valuation of the land? The answer to this question depends upon whether or not such apportionment is essentially fair to the other landowners.

The reason for such apportionment is to distribute voting strength in proportion to the liability which is created by district activity. Districts are formed to benefit land, but in order to provide those benefits, projects must be constructed, and the land becomes encumbered with the debt the district creates when it borrows funds to construct the necessary works. Assessments are then levied against the land to pay the obligations created by the district.

It does not seem unreasonable to say that among the landowners, the determination of the size and amount of indebtedness that will be created against each parcel should not be so weighted that the person whose land will bear a larger share of indebtedness than his neighbor should not have a larger voice in making the determination.

Statements such as "voter qualifications have no relation to wealth"[1] are perfectly proper when we are talking about the normal franchise for governmental units whose general powers touch all of the citizens. Where as here, however, we are speaking about a special agency which affects a special group of people, we should not blindly seize such statements as pronouncements of unassailable constitutional requirements, but instead should examine the particular circumstances to determine if the weighted voting is in fact fair and equitable.

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[1]*Harper v. Virginia State Board of Elections*, 383 U.S. 663 at 666.

The formation of a district is initiated by the landowners who must be a majority both in number and value of the land in the proposed district.[1] These landowners select one of the many acts available to them to form a district. They could, if they chose, form a Mutual Water Company[2] and issue shares of stock which are assessable,[3] and essentially, perform the same function as a district. Such companies even have the right to exercise eminent domain.[4] Companies so formed have provided a large share of the development of California water supplies, but like other corporations, voting is governed by the number of shares held by each landowner. Thus, to obtain more water for a larger holding, one landowner is required to buy more shares than his neighbor. In turn, he pays a larger assessment and has more votes.

This type of voting procedure has stood the test of time and no one has questioned its fairness. We see the same voting procedure in profit corporations throughout the United States, and it has not been determined unreasonable that a person with a large investment should not have a larger voice in management than a person with a smaller one.

". . . viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing social needs."[5] Weighting the voting between landowners in proportion to the share of the debt that is created rests upon the same equitable principles found in Water Companies. Governmental agen-

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[1]California Water Code § 39400.
[2]California Civil Code § 330.25.
[3]California Civil Code § 331.
[4]California Code of Civil Procedure § 1238.
[5]*Abate v. Mundt*, 403 U.S. at 185.

cies should be given the same right to be flexible and fair as private agencies, and the rights of persons such as the landowners should be viewed in the light of what has been accepted as fair and equitable in comparable circumstances. When so viewed, weighted voting stands the tests that should be applied.

V.

CONCLUSION.

The right to vote is certainly one of the most precious rights afforded to citizens of a democracy as it gives control over the governing body by those who are governed. The Court should vigorously apply the Constitutional safeguards available which provide protection to our right of franchise. In so doing, however, the Court should not take the right to vote away from a class of citizens who are directly governed by the governmental agency in question, and place it with another class who have little or no contact with or interest in the governmental unit.

Traditionally, when dealing with governmental agencies which have a general impact upon the persons within its jurisdiction, we have used residency as the criteria to determine who shall vote. This tradition is based upon the fact that the agency can, and does, exercise the police, tax, judicial, commerce, social welfare, and school powers which restrict, limit and govern the basic freedom of persons living within the jurisdiction. To safeguard against overzealous application of governmental power, the right to vote is given to those who are subject to that power. Jurisdiction to exercise governmental power is given over persons who reside within the agency so residence being the basis of that jurisdiction is the proper basis for determining who shall vote.

This tradition should not blind the Court to the fact that in certain limited local governmental agencies the foregoing is not true. The agencies are formed to provide a special function for a special group. Jurisdiction to exercise the agencies' power is not based on residence, it is based upon the location of a parcel of land being within the agencies' boundaries. The appellee District has no jurisdiction to act against a person because they reside within the District. Its jurisdiction and its exercise of governmental power concerns only the land within its boundaries, and the owners of that land wherever they might reside.

The people who are being governed by the limited powers of the District are the landowners. Following our traditional concept that those who are governed have the right to vote to control the governing agency, it follows that the voting qualifications as they now exist are not only Constitutional, but are the fairest that could be devised.

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Respectfully submitted,

SHERWOOD & DENSLOW GREEN,
By DENSLOW GREEN,
Attorneys for Amicus Curiae, Irrigation Districts Association of California.